

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

UNITED STATES OF AMERICA *

v. * CASE NUMBER CR412-18

ELIJAH AKEEN SAMPSON *

Transcript of Sentencing Hearing held November 2, 2012 before The
HONORABLE WILLIAM T. MOORE, JR., Judge Presiding, reported by
Marie Cowart, Official Court Reporter.

APPEARANCES:

For the Government

CAMERON H. IPPOLITO, AUSA

For the Defendant

ROBERT PHILLIPS, III

Proceedings recorded by shorthand with back-up recording; transcript produced from note reading in conjunction with transcription of back-up recording.

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1 [NOTE: Court is opened.]

2 THE COURT: Good afternoon, ladies and gentlemen. Would
3 you call the case, please.

4 CLERK: Yes, Your Honor. The Court calls the case of United
5 States of America versus Elijah Sampson, Case Number CR412-18.
6 Representing the government is Cameron Ippolito; representing the
7 defendant is Robert Phillips, III. This case is called for sentencing.

8 MS. IPPOLITO: Your Honor, good afternoon. The government
9 is ready.

10 MR. PHILLIPS: We're ready to proceed, too, Judge.

11 THE COURT: Well, I thought I picked up everything I needed.
12 I need to go get something. I'll be right back.

13 [NOTE: The Court briefly leaves the courtroom and returns.]

14 THE COURT: I'm not sure just where we were in the sentencing
15 statement at the time that I continued this matter to get the witness here,
16 so we'll start all over again.

17 Mr. Phillips, if you and Mr. Sampson would come forward,
18 please.

19 [NOTE: Counsel and defendant approach the lectern.]

20 THE COURT: Mr. Elijah Sampson, you appeared before the
21 Court on June 6, 2012, accompanied by your attorney, Mr. Robert Phillips,
22 III, for a Rule 11 proceeding.

23 On that date, pursuant to a plea agreement with the
24 government, you pled guilty and you were adjudged guilty of Count 17 of an
25 indictment charging you with carrying a firearm during and in relation to a

1 drug-trafficking crime, in violation of 18 United States Code, Section
2 924(c); and Count 18 of the indictment charging you with possession of a
3 firearm by a convicted felon, in violation of 18 United States Code, Section
4 922(g)(1).

5 Upon completion of the Rule 11 proceeding and the Court's
6 acceptance of the guilty plea, the Court directed the United States
7 Probation office to conduct a presentence investigation, and to file a report,
8 and to furnish you and your counsel and counsel for the government with a
9 copy of that report.

10 I ask you at this time, Mr. Sampson, have you had an
11 opportunity to read and discuss the presentence report and the addendum
12 to the report with your lawyer?

13 MR. SAMPSON: Yes, sir.

14 THE COURT: And do you or Mr. Phillips now have any
15 objections as to either the factual accuracy of the report, or to the probation
16 officer's application of the sentencing guidelines. And let me state before
17 you begin, Mr. Phillips, I have read the objections to Paragraphs 26, 47 and
18 62 of the presentence investigation report; and I have also read the
19 probation officer's response to those objections. I have read the
20 defendant's sentencing memorandum that you filed on behalf of the
21 defendant, Mr. Phillips; and I've read the government's sentencing
22 memorandum that the government filed in this case.

23 So you do not need to further articulate those objections for the
24 purpose of this hearing today, Mr. Phillips, but if you wish to speak any
25 further regarding any of those matters, then you're free to do so at this

1 time.

2 MR. PHILLIPS: No, sir, we stand on those objections, and the
3 only issue was to address the sentencing manipulation.

4 THE COURT: All right, sir. Do you agree with that, Mr.
5 Sampson?

6 MR. SAMPSON: Yes, sir.

7 THE COURT: There being no objections to the factual
8 statements contained in the presentence investigation report, the Court
9 adopts those statements as its findings of fact.

10 A question of guideline application has arisen with respect to
11 the conclusions contained in Paragraphs 26, 47 and 62 regarding the career
12 offender classification. The defense counsel questions that on the theory of
13 sentencing manipulation in this case.

14 So before I proceed further to make any findings in that regard,
15 Mr. Phillips, I'm prepared to hear whatever you wish to present regarding
16 that objections.

17 MR. PHILLIPS: May Mr. Sampson have a seat, Judge –

18 THE COURT: Yes, sir.

19 MR. PHILLIPS: – and I'd like to call Special Agent Moore.

20 [NOTE: Defendant is seated. Witness Sworn.]

21 CLERK: Please state your name and occupation, and spell your
22 last name for the record.

23 MR. MOORE: My name is Brian A. Moore, Special Agent with
24 the Bureau of Alcohol, Tobacco, Firearms and Explosives. Last name is
25 spelled M-O-O-R-E.

1 MR. PHILLIPS: May I proceed, Your Honor? May I proceed?

2 THE COURT: Yes, sir.

3 B R I A N A. M O O R E

4 DEFENDANT'S WITNESS, SWORN, TESTIFIED AS FOLLOWS

5 DIRECT EXAMINATION BY

6 MR. PHILLIPS:

7 Q Agent Moore, I'm Bobby Phillips. I represent Mr. Sampson and I have
8 a few questions for you, if you don't mind.

9 A Yes, sir.

10 Q Directing your attention to June 2011, you were undercover ATF at a
11 storefront in Thunderbolt; is that correct?

12 A Yes, sir, that's correct.

13 Q How did you learn about the defendant, Elijah Sampson, in this case?

14 A It was brought to our attention by a confidential informant.

15 Q And was that in June of 2011?

16 A Somewhere around that time, yes, sir.

17 Q Do you have your report with you so you can verify the dates?

18 A Well, that was the first date of the deal, June 22nd.

19 Q That was the first time that he came to your location in Thunderbolt?

20 A Yes, sir, that's correct.

21 Q And do you know how he happened to come to that location?

22 A He drove, sir.

23 Q Well, was he sent there by the confidential informant?

24 A He was –

25 Q – He was directed there?

1 A He was by himself, so I don't know.

2 Q My question is, how did he know to come to that specific location?

3 MS. IPPOLITO: I object. He's answered as well as he can. He
4 wouldn't know why this defendant –

5 THE COURT: – Well, he can say whether he knows or whether
6 he doesn't know. Ask the question, Mr. Phillips.

7 Q Do you know how he came to – you said he dealt with this confidential
8 informant.

9 A Yes, sir.

10 Q How did he get from the informant to the location in Thunderbolt?
11 How did he know to come to Thunderbolt for a drug transaction?

12 A That I'm not sure of, sir. I'm assuming that he spoke with the CI about
13 it.

14 Q So before he came on June 22, 2011, you had not had any contact with
15 Mr. Sampson?

16 A No, sir, I haven't.

17 Q Now, all of the transactions in Thunderbolt were videotaped; is that
18 correct?

19 A Yes, sir, that's correct.

20 Q You had like 12 – or maybe 20 cameras?

21 A Cameras?

22 Q A number of cameras.

23 A I would say it's less than 20, sir. I don't recall the exact number.

24 Q But each and every one of them were videotaped?

25 A Yes, sir, that's correct.

1 Q Was the confidential informant supposed to have been at the location
2 the first time? If you know.

3 A My recollection is that he was supposed to be there, that's correct.

4 Q Will you tell the Court, what was the nature of the transaction on June
5 22nd; that is, the quantity of drugs and the purchase price. Do you have that
6 information?

7 A It was arranged to purchase a half-ounce of powder cocaine for \$600.

8 Q And that transaction took place?

9 A Yes, sir, that's correct.

10 Q And there was no conversation at that point about any guns; is that
11 correct?

12 A No, sir.

13 Q Now, there was nothing at that point to stop you from arresting the
14 defendant on June 22, 2011.

15 A Stop me?

16 Q Yes, sir.

17 A No, sir.

18 Q Were you aware of his criminal history on June 22, 2011?

19 A No, sir, I was not.

20 Q Did you ever become aware of his criminal history?

21 A Yes, sir, later on in the investigation.

22 Q About how much later on?

23 A He was identified on or about the end of September 2011.

24 Q The next time that you saw the defendant was July 19, 2011; is that
25 correct?

1 A Yes, sir, that's correct.

2 Q Was that also in Thunderbolt?

3 A Yes, sir, it was.

4 Q In fact all of the meetings were in thunderbolt at the store front?

5 A Yes, sir, that's correct –

6 Q – On Rowan Avenue, all right. What was the nature of the transaction
7 on July 19, 2011? The quantity and the purchase price.

8 A Purchase a half-ounce of powder cocaine for \$600.

9 Q Were guns discussed then?

10 A No, sir.

11 Q Why did you not arrest the defendant after that second transaction?

12 A Because the investigation was a long-term undercover investigation, it
13 would not behoove us to arrest someone right after doing the second deal.

14 Q The next time you saw the defendant was in August, August 24, 2011?

15 A Yes, sir, that's correct.

16 Q Was that transaction set up through the confidential informant, or was
17 it set up directly with you?

18 A I believe it was a combination between the previous purchases and the
19 confidential informant.

20 Q And this transaction on August 24th resulted in your purchasing about
21 14 MDMA tablets?

22 A They came back negative for MDMA –

23 Q – That's correct –

24 A – but that was what they purported to be when they were sold.

25 Q But they turned out to be counterfeit in reality.

1 A Yes, sir, that's correct.

2 Q And you paid \$160?

3 A Yes, sir, that's correct.

4 Q Now, was any conversation about a gun during that transaction?

5 A No, sir.

6 Q When is the next time you saw the defendant after August 24th?

7 A August 25th.

8 Q And what was the nature of that transaction?

9 A To purchase a half-ounce of powder cocaine.

10 Q Now, from June 22nd through August 25th, had you or anyone else in
11 law enforcement to your knowledge been conducting any surveillance on
12 the defendant?

13 A No, sir, not that I know of.

14 Q What other investigation were you doing during that period of time on
15 the defendant as to these drug transactions?

16 A I don't understand the question.

17 Q Well, you said it was an ongoing drug investigation.

18 A Yes, sir.

19 Q What other ongoing activities were you engaged in with regard to this
20 defendant between June and August of 2011?

21 A During that time frame we were basically just trying to identify him.
22 We had been given the name Sean, and each vehicle that he'd shown up
23 with, the tags would not come back to his name, so –

24 Q – So it was only in September that you learned he was Elijah Sampson?

25 A Yes, sir, that's correct.

1 Q And you learned then of his prior criminal history?

2 A Yes, sir, it was ran at that time, yes, sir.

3 Q Now, there was a gun – when was the first gun transaction conducted?

4 A The first gun transaction was conducted August 31st by Special Agent
5 Bignase.

6 Q On August 25th there was a discussion about buying guns; was there
7 not? Or do you recall.

8 A I don't recall that, sir.

9 Q And on August 31st, the gun transaction involved another individual;
10 didn't it?

11 A Yes, sir, that's my understanding. I was not there at the time of the
12 transaction.

13 Q But your understanding from your report is that Mr. Sampson arrived
14 there on August 31st with another person who had a gun?

15 A Yes, sir, that's correct.

16 Q And Mr. Sampson sold drugs, but no gun?

17 A At that time, yes, sir.

18 Q Now, were you in charge of this investigation with regard to Mr.
19 Sampson?

20 A No, sir, I wasn't.

21 Q Who was in charge of the investigation?

22 A Agent Valoze is the case agent for the whole investigation.

23 Q Why did you not arrest the defendant on August 31st?

24 A Again, it's a long-term undercover operation.

25 Q When was your next transaction with the defendant?

1 A September 22nd, sir.

2 Q And that's 2011?

3 A Yes, sir, that's correct.

4 Q And what was the nature of that transaction?

5 A Purchased one ounce of powder cocaine.

6 Q And for that you paid eleven-hundred twenty-five dollars?

7 A Yes, sir, that's correct.

8 Q Now –

9 A – Well, I misspoke. I paid \$1,000 at that time, owing him \$125.

10 Q The original purchase price was eleven twenty-five, but you didn't have

11 –

12 A – That was what was quoted, yes, sir.

13 Q Now, as of September 22nd, the date of that transaction, you had
14 information about who the defendant was; did you not?

15 A No, sir, at that time, that's when found out who he was.

16 Q On September 22nd?

17 A On or about that date, yes, sir.

18 Q Now, there still was no ongoing surveillance of him; is that correct?

19 A No, sir, that's correct.

20 Q Now, the next transaction was in October, October 26th of 2011?

21 A September 28th I believe is the next transaction. Again, I was not there.
22 I believe that was Agent Bignase and –

23 Q – and what happened on September 28th?

24 A Agent Bignase purchased approximately 15.2 grams of powder cocaine
25 for \$600.

1 Q How much? I'm sorry.

2 A Approximately 15.2, according to the report.

3 Q For 2,000, did you say?

4 A I'm sorry, 2,000.

5 Q Thank you.

6 A I didn't understand your last question.

7 Q That's all right. I was just asking the amount, the \$2,000.

8 A No, no, it was 15.2 grams for \$600.

9 Q \$600. What was the next transaction after the September 28th
10 transaction?

11 A That would have been October 26, 2011.

12 Q And that was for 15.3 grams of cocaine for \$600?

13 A Yes, sir, that's correct, as well as a handgun.

14 Q Did you purchase a handgun on October 26th?

15 A Yes, sir, I did.

16 Q And that was a Cobra .380?

17 A Yes, sir, that's correct.

18 Q And you paid \$450 for it?

19 A Yes, sir, that is correct.

20 Q Now, at that time you knew who the defendant was.

21 A Yes, sir, that's correct.

22 Q And you'd made numerous drug purchases from him.

23 A I wouldn't say numerous, but there was previous drug transactions –

24 Q – The ones that you've outlined here this afternoon.

25 A I'm sorry?

1 Q The ones that you've outlined here this afternoon.

2 A Yes, sir, that's correct.

3 Q Why did you not arrest him on October 26th?

4 A Again, it was a long-term undercover investigation.

5 Q Well, what were you doing in regards to that long-term undercover
6 investigation?

7 A We were still purchasing illegal narcotics and firearms from other
8 defendants.

9 Q Were they related to this defendant?

10 A That I don't know, sir.

11 Q When did you see the defendant again after October 26, 2011?

12 A The next transaction would have been November 10, 2011.

13 Q And that was for the purchase of a .38 Taurus revolver for \$450 and a
14 pack of Cigarillos?

15 A Yes, sir, that's correct.

16 Q Going back to October 26th, do you remember telling – prior to October
17 26th telling the defendant that you wanted to buy handguns to ship to New
18 York?

19 A I'm not familiar with what date, but we did discuss purchasing
20 firearms.

21 Q And you – the agents, you and the other agents, brought that up to the
22 defendant; did you not?

23 A Yes, sir, that's correct.

24 Q Okay, and when you initially broached that subject, defendant told you
25 he did not have any handguns or guns to get you; is that not true?

1 A I don't recall that, sir.

2 Q So during the November 16th visit you also negotiated for the purchase
3 of some additional weapons from the defendant?

4 A What was the date on that, sir?

5 Q November 16th.

6 A November 16th to purchase the Smith & Wesson .38 special. Yes, sir, I
7 did tell him that we were looking for more guns to purchase.

8 Q So as of November the 16th you had purchased one gun in October, the
9 gun on November 10, and then also the gun on November 16th; is that
10 right?

11 A Yes, sir, that's correct.

12 Q So the next time you saw the defendant was December the 19th?

13 A Yes, sir, that's correct.

14 Q And what was the nature of that transaction?

15 A I purchased a half-ounce of powder cocaine and a Taurus .25 caliber
16 semi-automatic handgun.

17 Q And you paid \$500 for the cocaine and \$400 for the weapon?

18 A Yes, sir.

19 Q Now, on December the 19th of 2011, do you remember that date and
20 that meeting with the defendant?

21 A I recall it from my report, yes, sir.

22 Q You remember a pink handle on the gun?

23 A Yes, sir, I do.

24 Q And defendant made some comments about the gun would still kill
25 people. Why did you not arrest the defendant on that occasion?

1 A Because, again, it was long-term undercover investigation.

2 Q But you already had three or four gun sales and a number of drug
3 sales; right?

4 A Yes, sir.

5 Q Now, at any point up until December the 19th as part of your
6 investigation did you ever put the defendant under surveillance?

7 A No, sir, we did not.

8 Q The next time you saw the defendant was in January of 2012?

9 A I apologize, I don't have that report in front of me, sir.

10 MR. PHILLIPS: Judge, may I approach? Approach and hand it
11 to him.

12 THE COURT: Yes, sir.

13 Q Does that refresh your recollection, Agent Moore?

14 A Yes, sir, that's correct.

15 Q And so you saw him on January 25th of 2012?

16 A Yes, sir, that's ...

17 Q And during that visit you asked the defendant about selling an AK-47?

18 A I believe Sampson asked me – or the defendant asked me –

19 Q – Asked you about it. And so you actually talked about buying that
20 weapon from him on January 25th?

21 A Yes, sir, that's correct.

22 Q And the next – but you didn't buy it on that date; is that correct?

23 A No, sir.

24 Q Did you ever buy an AK-47 from him?

25 A No, sir.

1 Q The next time you saw the defendant was on February 22nd; is that
2 correct?

3 A Yes, sir, that's correct.

4 Q And that's the date he was arrested.

5 A Yes, sir, that's correct.

6 Q And he had 13 grams of cocaine on his person?

7 A Yes, sir.

8 Q Who made the determination to arrest him on February 22, 2012?

9 A The case agent, along with the prosecution made the date of the take-
10 down or the arrest for all the defendants.

11 Q Did – all of the defendants? You say all of the defendants as a part of
12 this undercover operation?

13 A Yes, sir.

14 Q Did you close down the Thunderbolt storefront then?

15 A Yes, sir, we did.

16 Q Did you ever try to get a name of a drug supplier from Mr. Sampson?

17 A No, sir, we did not.

18 Q Did you ever get him to tell you where he got the guns from?

19 A No, sir, we did not.

20 Q And why not?

21 A After the arrest Mr. Sampson had fought with police. He had resisted
22 arrest, had been tased twice in an attempt to escape, and after that we did
23 not want to speak with him.

24 Q You had no evidence of Mr. Sampson ever selling guns to anyone else
25 before the transactions with you; do you?

1 A The criminal history showed a possession of firearms.

2 Q But no evidence of sales of firearms?

3 A Not that I know of, no, sir.

4 Q At any time during –

5 THE COURT: – Wait a minute, it said possession of firearms.

6 Criminal history shows that when Mr. Sampson was 20 years old that he
7 was arrested in an automobile, and one handgun was found in the backseat
8 in the area where Mr. Sampson was seated. The statement was that he had
9 a criminal history of possessing firearms, and I'm not sure that the answer
10 conforms with the criminal history in the PSI.

11 MR. PHILLIPS: I don't recall that off the top of my head, Judge.
12 I'd have to look at it again. But I was directing my question toward the sale
13 of firearms. I thought the PSI did mention –

14 THE COURT: – You asked a question, you said, you don't have
15 any evidence of him selling firearms before, and his answer was he has a
16 criminal history of possession of firearms.

17 MR. PHILLIPS: Yeah, okay. I don't know if that's in his history
18 or not, Judge, I'd have to look at it.

19 THE COURT: But he has a criminal history of having been
20 arrested one time in a car where there was a single weapon found, a
21 handgun, in the backseat in the area where the defendant was seated, okay?

22 MR. PHILLIPS: Yes, sir, I understand.

23 THE COURT: Let's make sure the record knows that.

24 MR. PHILLIPS: All right, yes, sir.

25 Q (By Mr. Phillips) At any time prior to the arrest, did you personally

1 discuss the timing of the arrest with any Assistant District Attorney in
2 Chatham County? The Chatham County DA's office?

3 A No, sir.

4 Q Did you ever have that discussion with any person in the U.S.
5 Attorney's office as to the timing of the arrest?

6 A I believe Agent Valoze did.

7 Q Now, you could have arrested him at any time during those numerous
8 transactions because he committed a crime?

9 A Yes, sir.

10 Q And the reason – you're saying the reason you did not do that because
11 it was an ongoing investigation?

12 A That's correct.

13 Q But you admit to this Court that you're the one who brought up the
14 possibility of buying drugs – buying weapons from Mr. Sampson?

15 A Yes, sir.

16 MR. PHILLIPS: No further questions, Judge.

17 THE COURT: Any questions, Ms. Ippolito?

18 MS. IPPOLITO: Yes, Your Honor.

19 CROSS-EXAMINATION BY

20 MS. IPPOLITO:

21 Q Agent Moore, do you know of any other information besides the
22 conviction for a concealed weapon, any other information in the hands of
23 the ATF regarding this defendant's previous involvement in guns?

24 A No, sir –

25 Q – You're not aware –

1 A – No, ma’am, not that I recall. No, ma’am.

2 Q Okay. Why would the ATF – why is ATF interested in buying firearms
3 from people like Mr. Sampson?

4 A That’s ATF’s goal, is to reduce violent crime and to get firearms and
5 illegal narcotics off the streets.

6 Q Why would you buy more than one gun?

7 A Well, I think it shows a pattern for the defendant, as well as, you know,
8 it’s part of our job. We’re supposed to get as many guns off the street as we
9 possibly can. Illegal guns.

10 Q Would you have any way of knowing – you mentioned earlier that you
11 investigated multiple defendants in the same storefront operation. Would
12 you have any way of knowing for sure whether or not they were associated
13 with one another while you were carrying on the investigation?

14 A No, ma’am.

15 Q During these meetings with the defendant – defense counsel asked
16 about the time the defendant offered to sell you an AK-47. Were there also
17 other times when he offered additional weapons?

18 A Yes, ma’am, there were.

19 Q So in addition to the five guns that he actually sold you, how many
20 times did he offer additional guns?

21 A I believe it was five other times.

22 Q Why would you not arrest this guy every time his lawyer asked you,
23 why didn’t you arrest him then? Why didn’t you arrest him then? Why
24 didn’t you?

25 A It would have blown the whole undercover operation. Our location

1 would have been – the street lingo is burned. Everyone would know that
2 we were the police, and it would not get us to our goal of trying to get as
3 many illegal guns off the street.

4 Q This operation was established by a joint task force between ATF and
5 the Savannah-Chatham Metro Police; is that right?

6 A Yes, ma'am, that's correct.

7 Q How long was the storefront in operation?

8 A A little over a year, ma'am. I believe.

9 Q Did it – was it in a commercial location where you were paying rent?

10 A Yes, ma'am, it was.

11 Q And were there operating overhead costs to the location such as
12 utilities, cable, things like that?

13 A Yes, ma'am, there were.

14 Q All those things were set up by the agencies in anticipation of running a
15 long-term investigation?

16 A Yes, ma'am, that's correct.

17 Q And why – what is the purpose of doing this sort of thing here in
18 Chatham County?

19 A Well, first of all, it reduces violent crime. Word gets out that people are
20 being arrested by the federal agencies for gun crimes, and lot of times the
21 ones that are still in the street will think twice about selling guns or
22 possessing guns when they're not supposed to.

23 Q And did this location also have multiple cameras set up for audio and
24 video recording of the contacts with suspects?

25 A Yes, ma'am, it did.

1 Q And was that system designed by technicians in order to best capture
2 the evidence at the highest quality?

3 A Yes, ma'am.

4 Q And while you were having contact with people on camera, did you put
5 forth an undercover story about wanting to buy guns?

6 A Yes, ma'am, we did.

7 Q What was the reason that you-all did that?

8 A Well, the story was always that we were sending the guns up to New
9 York. It's unusual for one person to buy multiple guns over and over, so we
10 give them the story that these guns are being shipped to New York, and
11 we're doubling our money then because the prices of guns in New York are
12 traditionally higher than they are here in the state of Georgia.

13 Q Now, you bought contraband in this location from a number of
14 different defendants; right?

15 A Yes, ma'am, we did.

16 Q Once you bought a firearm – one firearm from each person, would you
17 then arrest that person?

18 A No, ma'am.

19 Q Why not?

20 A Again, it's an ongoing long-term investigation. If we arrested everyone
21 after the first hand-to-hand or purchase, then it would blow our operation.

22 Q Once you came into contact with the defendant here, did you attempt
23 to learn his true identity?

24 A Yes, ma'am, we did.

25 Q What sorts of steps did you take to learn his true identity?

1 A It was running the vehicles' tags that he was showing up in, and
2 running the names off the vehicle tags to try to identify the name off of that.
3 A lot of times the vehicles were coming back to females.

4 Q If you had arrested him after your first purchase of cocaine from him
5 like his lawyer says you should have, would you have been able to put his
6 name on a warrant?

7 A No, ma'am.

8 Q Would you have been able –

9 A – Other than a –

10 Q – to charge him?

11 A Only name we had was the name that he had given us, which would
12 have been Sean, which is actually not his real name.

13 Q So if you took out a warrant for someone named Sean, would there
14 ever be any way to serve that warrant?

15 A No, ma'am, there wouldn't.

16 Q And you mentioned that you did not learn his true identity until some
17 time in September?

18 A Yes, ma'am, I believe it was September time frame, end of September.

19 Q Okay, so by that time you had met with him one, two, three, four, five,
20 six times; right?

21 A Well, myself and other agents in combination.

22 Q Agents had met with him six times.

23 A Right.

24 Q Is that accurate?

25 A Yes, ma'am.

1 Q Okay, and one firearm had already been purchased from him by that
2 time?

3 A Yes, ma'am, that's correct.

4 Q And it was sold in connection with another person; is that right?

5 A Yes, ma'am. If I could clarify my answer on the previous question. He
6 had brought in a second subject who identified himself as Red who sold the
7 .22 to undercover Agent Bignase.

8 Q And on December 19th you conducted the transaction that you were
9 asked about earlier where he sold you cocaine and the Taurus .25 pistol
10 with the pink handles; is that right?

11 A Yes, ma'am, that's correct.

12 Q Have you reviewed that video in order to present it to the Court this
13 afternoon?

14 A Yes, ma'am, I have.

15 Q Approximately how long is that video?

16 A I'd probably say 10 or 15 minutes or less.

17 MS. IPPOLITO: Your Honor, at this time I would ask the Court
18 for leave to play the video so that the Court can observe the transaction this
19 defendant pleaded guilty to.

20 THE COURT: All right. I believe you played it at the Rule 11, as
21 I recall, but I'm happy to look at it again.

22 MS. IPPOLITO: Thank you, Your Honor.

23 [NOTE: A video is played.]

24 Q (By Ms. Ippolito) Agent Moore, are there any other facts connected to
25 the December 19th transaction or other contact with the defendant that you

1 would like to add?

2 A No, ma'am.

3 MS. IPPOLITO: Thank you, Your Honor.

4 MR. PHILLIPS: No further questions, Judge.

5 THE COURT: All right, you may come down, sir. Thank you.

6 [Witness Excused]

7 THE COURT: Any other witnesses that you wish to call, Mr.
8 Phillips?

9 MR. PHILLIPS: No, sir.

10 THE COURT: Does that conclude the objections regarding the
11 issue of sentencing manipulation as far as any evidence that you wish to
12 present –

13 MR. PHILLIPS: Yes, it does.

14 THE COURT: – regarding that argument?

15 MR. PHILLIPS: Yes, sir.

16 THE COURT: All right, sir. You can have a seat, Mr. Phillips.

17 After considering the objections raised in this case, and after
18 hearing the testimony of Agent Moore, and viewing the video, and
19 considering the arguments made in the sentencing memorandum filed by
20 the defendant, and also the sentencing memorandum filed by the
21 government, it's the findings of the Court that on June 6, 2012, the
22 defendant pled guilty to one count each of carrying a firearm during and in
23 relation to a drug-trafficking crime, and possession of a firearm by a
24 convicted felon.

25 According to the presentence investigation report, the

1 defendant sold cocaine to an undercover agent three times from June 22,
2 2011 to August 25, 2011; and on one occasion the defendant sold what he
3 purported to be ecstasy to an undercover agent; however, testing revealed
4 that the tablets did not contain any controlled substance.

5 During the August 25, 2011 sale, the agent inquired about
6 purchasing from the defendant handguns for shipment to New York. On
7 August 31, 2011, the defendant sold a rifle to the agent, promising to bring a
8 handgun to sell at a later date.

9 Defendant then sold cocaine to the agent on two occasions,
10 September 22 and 28, 2011. Between October 26, 2011 and December 19,
11 2011, defendant sold handguns to the agent on four separate occasions.

12 The Eleventh Circuit does not recognize sentencing entrapment
13 as a viable defense, citing *Ciszkowski*, if that's the right pronunciation –
14 *United States v. Ciszkowski*, and that's an Eleventh Circuit opinion in
15 2007. Based upon the Eleventh Circuit's continued and unequivocal
16 statements that it does not recognize sentencing entrapment, then that
17 issue requires no further discussion.

18 However, the Eleventh Circuit does recognize sentencing
19 manipulation, citing *United States v. Sanchez*, a 1998 opinion, and this
20 defense focuses on the actions of law enforcement rather than on any
21 predisposition of the defendant to commit a particular crime.

22 To find sentencing manipulation, the government's conduct
23 must be so outrageous that it is fundamentally unfair, here citing *United*
24 *States v. Ofshe*, a 1987 Eleventh Circuit opinion. In this context
25 government conduct is outrageous when law enforcement obtains a

1 conviction for conduct beyond a defendant's predisposition by employing
2 methods that fail to comport with due process guarantees. Sentencing
3 factor manipulation occurs when the government's manipulation of a sting
4 operation, even if insufficient to support a due process claim, requires that
5 the manipulation be filtered out of the sentencing calculus, citing *Sanchez*.

6 Unfortunately for us here, that is the extent of the Eleventh
7 Circuit's development of any standard for sentencing manipulation.
8 However, the facts and *dicta* in *Ciszakowski* provide some useful insight. In
9 that case, the defendant contracted with an undercover agent to kill an
10 informant for the Drug Enforcement Agency. At a later meeting, the agent
11 provided the defendant with a brown paper sack containing cash and
12 ecstasy as payment for the murder, and a Ruger pistol to carry out the hit.
13 Unknown to the defendant, the barrel of the pistol included a silencer.
14 Ultimately the defendant was convicted of, among other crimes, possession
15 of a firearm with a silencer in furtherance of a crime of violence and drug-
16 trafficking crime.

17 In that case, at sentencing the district court declined to depart
18 from the mandatory minimum sentence of 30 years for possession of a
19 silenced handgun. On appeal, the Eleventh Circuit rejected the defendant's
20 argument that the mandatory minimum should not apply due to the
21 government's actions with respect to supplying the firearm with the
22 undetected silencer. As an initial matter, the Eleventh Circuit recognized
23 that the defendant bears the burden of establishing that the government's
24 conduct is sufficiently reprehensible to constitute sentencing factor
25 manipulation. Also, the Eleventh Circuit noted that the fact that law

1 enforcement may provide drugs or guns essential to a willing and
2 predisposed offender does not necessarily constitute misconduct, citing
3 *Sanchez*. Rather, the government's actions must rise to the level of
4 extraordinary misconduct.

5 Ultimately, the Eleventh Circuit found that the government did
6 not engage in extraordinary misconduct, finding it conceivable that the
7 government could reasonably decide that a muzzled firearm is the
8 appropriate weapon for the commission of a murder for hire, and then
9 provide the defendant with such a weapon. However, the Court noted it
10 would be troubled if the government provided the muzzled weapon solely
11 to influence the defendant's sentence upon a conviction.

12 Furthermore, the Court stated that it might be inclined to find
13 sentencing manipulation if the government provided an undetectable
14 silenced weapon in a circumstance where the firearm or the silencer was
15 completely unrelated to the accompanying criminal act.

16 Based upon the Eleventh Circuit's discussion in *Ciszkowski*,
17 this Court in this case does not believe that defendant in this case can
18 establish a claim of sentencing manipulation. Absent some sort of
19 admission by the government that the purpose of expanding the sting from
20 drugs to firearms was for the sole purpose of increasing defendant's
21 sentence, the government's decision to escalate the sting – in this case the
22 firearms – is understandable because it is an independent crime that law
23 enforcement may choose to include in their sting.

24 For an example, the Eleventh Circuit has declined to recognize
25 sentencing manipulation where the government's decisions subjected the

1 defendant to an increased sentence, such as using a minor victim in a sting
2 operation, selling the defendant crack instead of cocaine, or selecting a
3 larger fictitious amount of drugs for the defendant to steal. In light of
4 *Ciszkowski*, sentencing manipulation only occurs where the government
5 surreptitiously causes a defendant to commit a crime completely unrelated
6 to the unrelated criminal act that the defendant has elected to commit.

7 The only argument that this Court can see for sentencing
8 manipulation in this case is that the government fundamentally changed
9 the nature of the sting operation from drugs to guns. However, this
10 argument only works if the government can offer no reasonable
11 explanation as to why it elected to make that change. Indeed, even this
12 admission might be insufficient to find sentencing manipulation because
13 *Ciszkowski* appears to also require that the government act in some
14 surreptitious manner, such as including an undetectable silencer on a
15 firearm, and in this case there's no evidence in the record that any action by
16 the government caused defendant to unwittingly commit the firearm crime.

17 As mentioned, absent an admission by the government that the
18 purpose of the firearm sale was to subject defendant to a greater sentence,
19 there is no ground to find sentencing manipulation. Indeed, it would be
20 odd to think that the government is precluded from expanding the scope of
21 any sting operation to encompass additional crimes, instead being forced to
22 limit the sting operation to its original purpose.

23 Given the deference that the Eleventh Circuit often shows to
24 law enforcement, the Eleventh Circuit is likely to reverse any finding of
25 sentencing manipulation absent an outright admission by the government

1 that the government engaged in such manipulation, and that does not
2 appear to be the record in this case.

3 After considering the objections raised in this case, and all of
4 the other matters that the Court has stated that it has considered, and for
5 the reasons just stated, the Court concurs with the findings in the
6 presentence investigation report, including the addendum, and determines
7 that the applicable advisory guidelines are: a total offense level of 30;
8 criminal history category 4; 262-to-327 months of imprisonment; two-to-
9 five years of supervised release as to Count 17; one-to-three years of
10 supervised release as to Count 18; a \$15,000 to \$150,000 fine; no
11 restitution; and a \$200 special assessment.

12 Now, Mr. Phillips, does defense counsel wish to make any
13 statement or present any information in mitigation of sentence?

14 MR. PHILLIPS: No, sir. You want us to ...

15 THE COURT: Yes, sir.

16 [NOTE: Counsel and defendant approach the lectern.]

17 THE COURT: Do you have anything outside of the sentencing
18 memorandum you filed, Mr. Phillips?

19 MR. PHILLIPS: No, sir.

20 THE COURT: Does the government wish to present any
21 information as to the appropriate sentence?

22 MS. IPPOLITO: Your Honor, we rely on our sentencing
23 memorandum; in particular, our reliance on *United States v. Denson* and
24 we note that under 3553(a), a guideline sentence is appropriate in this case.
25 We urge the Court that there is no reason to depart or vary from the

1 guidelines here, and that to do so would lead to an unwarranted sentencing
2 disparity between this defendant and other career offenders, especially in
3 light of the fact that he has been allowed to plea to one count of 924(c)
4 when, if he had gone to trial in this case, he would have faced a 55-year
5 mandatory minimum for three counts of 924(c).

6 We respectfully urge the Court to sentence him within the
7 guideline range.

8 THE COURT: Mr. Sampson, the law provides that you have the
9 right to make any personal statement to the Court before the imposition of
10 sentence. Do you now wish to make any statement or is there any
11 additional information that you would like the Court to consider in
12 mitigation of sentence?

13 MR. SAMPSON: No, sir.

14 THE COURT: I have listened to the defendant's counsel, the
15 defendant having elected not to make a statement. I've listened to counsel
16 for the government. I've reviewed the presentence investigation report and
17 the addendum to the report. I've heard the testimony today of Agent
18 Moore, and I've seen and heard the video presentation; and I've also
19 considered the memorandums filed by both the defense and by the
20 government in this case. I've also considered the factors set forth in 18
21 United States Code, Section 3553(a).

22 Pursuant to the Sentencing Reform Act of 1984, it is the
23 JUDGMENT OF THE COURT that the defendant, Elijah Sampson, is
24 hereby committed to the custody of the Bureau of Prisons to be imprisoned
25 for a term of 180 months.

1 This Court does not agree that the appropriate sentence in this
2 case should have a sentencing range between 262 months to 327 months of
3 imprisonment.

4 The defendant in this case is now 23 years of age. The
5 defendant left school in the sixth grade because of below-test average
6 scores, and was not able to keep up. The defendant was raised principally
7 by his mother, his mother and father having never married, and having
8 little or no contact with his father. Indeed, during an eight-year period of
9 time during the defendant's early age, the defendant's father spent that
10 time in prison. Since he was sixteen years of age the defendant has used
11 marijuana on a daily basis.

12 The defendant is a career criminal in this case because of what
13 has to be considered as minor drug infractions; not that they're not drug
14 related, but in 2009 when the defendant was 20 years of age, he was
15 arrested in Chatham County, Georgia by state authorities and he was
16 sentenced and pled to possession with intent to distribute marijuana. In
17 that case, the defendant possessed five small bags of marijuana, \$86 in
18 case, and there was no weapon involved. Several months later, again when
19 the defendant was 20 years of age, the defendant pled guilty to the same
20 offense, possession with intent to distribute marijuana. On that arrest, the
21 defendant had what – according to the PSI, in his possession a small
22 quantity of marijuana, and \$282 in cash. And again, there was no weapon
23 involved.

24 When the defendant was 20 years of age he was a passenger in
25 an automobile. There was a stop of the automobile. The defendant was not

1 the driver of the automobile. A firearm was found in the backseat area of
2 that automobile where the defendant was seated, and the defendant was
3 sentenced for being in possession of a firearm. There was no charge of
4 being a felon in possession of a firearm, but he did receive a firearm
5 possession sentence in that case.

6 The defendant has no juvenile record, according to the
7 presentence investigation report. So he has had, when he was 20 years of
8 age, two possessions with intent to distribute marijuana involving very
9 small amounts of marijuana. The defendant has no history – even though
10 prior to this case he had the one history of a firearm, the defendant has no
11 history of any type of violent behavior. He has no history of robberies,
12 assaults, burglaries, or any weapons, other than in this case where he sold
13 weapons and drugs to the undercover agent, of being involved in any of his
14 prior activities.

15 A sentence anywhere within the range of 262-to-327 months, in
16 this Court's opinion, is not warranted in this case. It vastly overstates and
17 over-represents the true criminal history of this defendant in this Court's
18 opinion. The Eleventh Circuit has held that the district court may
19 determine on a case-by-case basis the weight to give guidelines, so long as
20 that determination is made with reference to the remaining Section 3553(a)
21 factors that the Court must consider in calculating the defendant's
22 sentence. Factors to be calculated in imposing a sentence require that the
23 Court should impose a sentence sufficient but not greater – and I
24 emphasize but not greater – than necessary to comply with the purposes
25 set forth by the Sentencing Commission and the Congress in the 18,

1 3553(a) factors. And in making the determination as to what the sentence
2 should be, the Court should consider, first, the nature and circumstances of
3 the offense, and the history and characteristics of the defendant. The Court
4 has just outlined the history and some of the defendant's characteristics. I
5 did leave out the fact that this defendant was living at home being
6 supported by his single parent, his mother, was helping his mother at the
7 time of this offense attend to a sibling - that being one of his brothers –
8 who is a quadriplegic.

9 In imposing this sentence, the Court is required to reflect on
10 seriousness of the offense, to promote respect for the law, and to provide
11 just punishment for the offense. And I have done that. This is a drug
12 offense, which is a serious offense. But because of two offenses when the
13 defendant was 20 years of age involving a very small quantity of marijuana,
14 a very small amount of cash, no weapons or violence involved, then he's
15 now looking at guidelines of 262-to-327 months. In the Court's opinion, in
16 order to promote respect for the law in this case, a sentence of 180 months,
17 which is 15 years, is more than sufficient to punish this defendant for the
18 conduct based upon these considerations, and it also provides just
19 punishment for this offense. The defendant was not a ringleader in an
20 organization, he was not a manager of a drug organization. There's been
21 no evidence that he controlled others, or that he supervised others. He was
22 a 23-year-old street drug dealer, for lack of a better description. He was
23 not a manager or organizer, or a facilitator.

24 In the Court's opinion, this sentence that the Court has
25 announced today affords adequate deterrence of future criminal conduct by

1 this defendant. As I've said, this is a sentence of 15 years, 180 months. The
2 defendant is not likely to be out on the street any time soon. And he will
3 also be under supervised release at the end of this sentence.

4 In the Court's opinion this sentence protects the public from
5 further crimes of the defendant. Having this 23-year-old man incarcerated
6 for 15 years, in the Court's opinion, adequately protects the public from any
7 future crimes by this defendant.

8 In the Court's opinion, this sentence also can and will provide
9 the defendant with needed educational or vocational training. As I've said,
10 this defendant has had no education since the sixth grade. He apparently
11 has learning problems that kept him from keeping up in school. He has not
12 received a GED or had any formal training since that time. While in the
13 custody of the Bureau of Prisons the defendant would have an opportunity
14 to complete a general educational diploma. He would have an opportunity
15 to develop job skills and vocational training. He will obviously be entitled
16 to medical care and other correctional treatment. And also, the defendant,
17 it seems to be unquestioned, since he was 16 years old has had daily use of
18 marijuana. During this period of incarceration, the defendant will be
19 entitled to drug counseling and drug abuse programs while incarcerated,
20 which will hopefully during this long period of incarceration benefit the
21 defendant as far as giving him correctional treatment in the most efficient
22 manner for his drug problem.

23 In good conscience in this case for all the reasons stated, it is
24 this Court's opinion that a sentence of 180 months in this case is sufficient
25 and adequate to meet all the sentencing objectives of the Congress, of the

1 Sentencing Commission, and of law enforcement.

2 The Court's sentence in this case is a variance, and I have cited
3 the 3553(a) factors which I have considered in making this variance, and
4 also the fact that in the Court's opinion, based upon the history of this
5 defendant, his criminal history over-represents what should be considered
6 as his true criminal history.

7 The Court has granted a variance from the sentence called for
8 by application of the advisory guidelines, which range exceeds 24 months,
9 and the Court has given the reasons for doing so. And even though the
10 defendant's conduct is serious conduct, the Court has determined that the
11 sentence of 180 months is sufficient to address all of the sentencing factors
12 set forth in 18 United States Code, Section 3553(a).

13 It is recommended that the defendant be evaluated by Bureau
14 of Prisons officials to establish his participation in an appropriate program
15 of substance abuse treatment and counseling during his term of
16 incarceration.

17 After considering the factors set forth in United States
18 Sentencing Guidelines, Section 5E1.2(d), the Court has determined that the
19 defendant does not have the ability to pay a fine.

20 FURTHER ORDERED that defendant shall pay to the United
21 States a special assessment of \$100.00 as to each count, for a total of
22 \$200.00, which shall be due immediately.

23 Upon release from imprisonment, the defendant shall be placed
24 on supervised release for a total term of five years. This term of
25 supervision is comprised of a five-year term of supervised release as to

1 Count 17; and a concurrent three-year term as to Count 18. While on
2 supervised release the defendant shall comply with the standard conditions
3 of supervision adopted by this Court; and the mandatory conditions
4 required by 18 United States Code, Section 3583, which will include, but
5 not be limited to, urine testing, a prohibition against possession of any
6 firearm or other dangerous weapon, and a prohibition against the violation
7 of any local, state or federal law.

8 Further, the defendant shall cooperate in the collection of a
9 DNA sample as directed by the probation officer pursuant to 18 United
10 States Code, Section 3583.

11 The defendant shall participate in a program of testing for drug
12 and alcohol abuse; and further, the defendant shall not tamper with any
13 testing procedure.

14 The defendant shall earn his General Educational Development
15 diploma if such diploma is not earned while incarcerated.

16 The defendant shall submit his person, property, house,
17 residence, office, papers, vehicles, computers, as defined in 18 United
18 States Code, Section 1030(e)(1), or other electronic communication or data
19 storage devices or media, to a search conducted by the United States
20 Probation officer at a reasonable time and in a reasonable manner based
21 upon reasonable suspicion of contraband or evidence of a violation of a
22 condition of release. A failure to submit to such a search may be grounds
23 for revocation. The defendant shall warn any other occupants that the
24 premises may be subject to searches pursuant to this condition.

25 The probation officer is hereby directed to provide the

1 defendant with a written statement which sets forth all the conditions to
2 which the term of supervised release is subject.

3 The Court has accepted the plea agreement because it is
4 satisfied that the agreement adequately reflects the seriousness of the
5 actual offense behavior, and that accepting the plea agreement will not
6 undermine the statutory purposes of sentencing.

7 In accordance with the plea agreement, IT IS ORDERED that
8 Counts 1 through 16, and Count 19 of the indictment be dismissed.

9 It is FURTHER ORDERED that defendant is remanded to the
10 custody of the United States Marshal.

11 Mr. Phillips, whatever designated institution you want me to
12 recommend to the Bureau of Prisons, if you'll let the probation office know,
13 I will make that recommendation in the final judgment and commitment in
14 this case.

15 Mr. Sampson, you are now advised that it is your right to appeal
16 from this sentence within 14 days from this date; and a failure to appeal
17 within the 14-day period shall be a waiver of your right of appeal. The
18 government may appeal this sentence.

19 You are also advised that you are entitled to assistance of
20 counsel in taking an appeal, and if you're unable to afford a lawyer one will
21 be provided for you.

22 If you so request the Clerk of Court will prepare and file a notice
23 of appeal on your behalf.

24 Sentence has now been pronounced. Other than any objections
25 previously stated for the record, do you now have any objections to the

1 Court's findings of fact, conclusions of law, or manner in which the
2 sentence was pronounced, Mr. Phillips?

3 MR. PHILLIPS: No, sir, we do not.

4 THE COURT: Ms. Ippolito?

5 MS. IPPOLITO: No, Your Honor.

6 THE COURT: Mr. Sampson, you received a sentence today that
7 is a lengthy sentence. More than likely when you get through serving this
8 sentence you'll be somewhere around 36-37 years of age. You've still got
9 the remainder of your adult life ahead of you. I hope that this Court was
10 not wrong today. I hope that there is something to be saved in you. But I
11 can tell you this, if during this period of incarceration, if you don't further
12 your education, and if you don't learn some kind of job skill, and if you
13 don't rid yourself of your marijuana habit, when you get back out and get
14 back on the street, as we say, then more than likely you'll end up
15 committing another drug offense and going back to prison for the
16 remainder of your adult life. Do you understand what I'm saying to you?

17 MR. SAMPSON: Yes, sir.

18 THE COURT: Well, you need to understand what I'm saying to
19 you. And I'm sure Mr. Phillips will explain that to you. Because you won't
20 get another chance if you go back to being a drug dealer on the streets. And
21 you won't get another chance if you go back to being a felon who possesses
22 or sells firearms.

23 Now, you cannot have – for the rest of your life you cannot
24 possess a firearm of any kind. Do you understand that?

25 MR. SAMPSON: Yes, sir.

1 THE COURT: Not just selling it. You can't have it.
2 You can't have it in the car you're driving in. You can't have it where you work.
3 You can't have it where you live. It's no excuse to say, well, it wasn't mine, it
4 belonged to somebody else. If you're arrested and found in possession of a
5 firearm again, then you will spend significantly more time in jail than
6 you're getting at this sentence today. Do you understand that?

7 MR. SAMPSON: Yes, sir.

8 THE COURT: You're going to be under supervised release for
9 five years. That means you're going to have to report regularly to these
10 people over here at the probation office. You're going to have to get a job
11 and work and report your job. You're going to have to live in a good
12 environment. You're going to have to tell them where you're living. You're
13 going to have to be a law-abiding citizen. That's what's going to be required
14 of you.

15 Now, when you're in prison you can do two things: You can
16 either hang out with criminals – 'cause everybody is in there for something,
17 but a lot of them are in there for worse things. Now you can either hang out
18 with, I don't know, lack of a better description, hang out with the home-
19 boys or whatever you say, and just become a worse person. Or you can try
20 to improve yourself. That's going to be up to you. I hope you make the
21 right decision, Mr. Sampson.

22 All right, we'll be in recess.

23 [NOTE: Whereupon the proceedings are concluded.]

STATE OF GEORGIA
CHATHAM COUNTY.

CERTIFICATE OF REPORTER

I, Marie Cowart, do hereby certify that the above and foregoing pages of typewritten material is a true, correct and complete transcript of the evidence and proceedings adduced in the hearing stated in the captioned matter.

This 5th day of December, 2016.

/s/ *Marie Cowart*

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